

THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES

ON NATIONAL ISSUES CONCERNING PEOPLE WHO ARE DEAF OR HARD OF HEARING

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RECEIVED

November 26, 1997

NOV 26 1997

Mr. William F. Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Closed Captioning and Video description of Video  
Programming, MM Dkt. No. 95-176

Dear Mr. Caton:

Enclosed please find an original and fourteen copies of the Statement in Opposition to Industry Requests for Reconsideration and In Support of Consumer Requests for Reconsideration, submitted by the Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing, in the above referenced proceeding.

Sincerely,

Keith Muller  
League for the Hard of Hearing  
71 W. 23rd Street  
New York, NY 10010-4162  
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(212) 741-1932 (TTY)

Co-Chairs, COR

Enclosures

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In the Matter of )  
 )  
Closed Captioning and Video )  
Description of Video Programming )  
 ) MM Docket No. 95 -176  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

**STATEMENT IN OPPOSITION TO INDUSTRY REQUESTS FOR  
RECONSIDERATION AND IN SUPPORT OF CONSUMER REQUESTS FOR  
RECONSIDERATION**

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**STATEMENT IN OPPOSITION TO INDUSTRY REQUESTS FOR  
RECONSIDERATION AND IN SUPPORT OF CONSUMER REQUESTS FOR  
RECONSIDERATION**

**I. Introduction**

The Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing (COR)<sup>1</sup> submits this statement in opposition to the Requests for Reconsideration submitted by the Association of America's Public Television Stations, the Association of Local Television Stations, Encore Media Group, NIMA International, the Game Show Network, the Outdoor Life Network, Speedvision Network, and the Golf Channel. At the same time, COR submits this statement in support of the Requests for

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<sup>1</sup> The following members of COR support these comments: Alexander Graham Bell Association for the Deaf, American Academy of Audiology, American Academy of Otolaryngology-Head and Neck Surgery, American Society for Deaf Children, The Caption Center, Convention of American Instructors of the Deaf, League for the Hard of Hearing, National Association of the Deaf, Registry of Interpreters for the Deaf, Self Help for Hard of Hearing People, Inc., and Telecommunications for the Deaf, Inc.

Reconsideration submitted by the National Association of the Deaf/Consumer Action Network (NAD/CAN or NAD et. al.) and Self Help for Hard of Hearing People, Inc. (SHHH).

COR is a coalition of national organizations that are committed to improving the lives of individuals who are deaf or hard of hearing. Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, social and rehabilitation services, support groups and self-help programs, medical evaluation and treatment, and general information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a bridge among interested organizations, the general public, and the community of people with disabilities on matters concerning deaf and hard of hearing individuals. COR submitted comments during several stages of the FCC's docket on closed captioning, and wishes to thank the Commission for its efforts to expand television access through this proceeding.

## II. The FCC Should Reject all Requests for Additional Captioning Exemptions

Section 713 of the Communications Act is very specific in directing the FCC to limit exemptions from the captioning mandates only to situations where imposing those mandates would result in an economic or undue burden, or would conflict with contractual arrangements. The FCC has recognized this and has itself stated: "[i]n order to make sure that the exemption process does not undermine the broad goals of Section 713, we believe exemptions should be limited to only those situations where captioning truly is an economic burden." *In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order*, FCC 97-279, MM Dkt. No. 95-176 (August 22, 1997) (R&O) at ¶143.

Notwithstanding this directive, several parties to this proceeding have now come forth and requested the Commission to eliminate captioning obligations in situations which clearly would not fall within these exemption categories. We urge the Commission not to grant these petitions, which request additional exemptions for instructional programming, new networks, local programs with repeat value, political candidate debates, older library programming, home shopping and infomercials, and interactive programming. Most notably, we urge the Commission to reject outright the request by the Association of America's Public Television Stations (APTS) to exempt all instructional programming. The failure to require captioning on such programming will create adverse conditions for our nation's school children with hearing disabilities, putting these children at a disadvantage next to their hearing peers. The Commission has already established a general revenue-based exemption, permitting programmers who lack a sufficient economic base from which to fund captioning costs, to obtain relief from its rules. R&O ¶¶ 160-164. Specifically, the FCC's Order provides an exemption for providers who have annual gross revenues of less than \$3 million, and creates a cap of 2% of the annual gross revenues for captioning expenses. We agree that this general revenue-based approach is the proper means of responding to the request by APTS and the other networks that have petitioned the Commission. Not only does it afford the flexibility needed to ensure that captioning obligations vary with the resources of a given programming provider, it creates an across-the-board solution that is both fair to all providers and consistent with Congressional intent.

### III. The FCC Should Revise its Rules in a Manner that Conforms with Legislative Intent

At the same time that we urge the FCC not to weaken its final captioning rules in any manner, we urge the Commission to take certain actions that will bring those rules more in line

with Congress' overall objective to provide full access to video programming for deaf and hard of hearing people. Specifically, we urge the Commission to grant the Requests for Reconsideration submitted by the NAD et. al. and SHHH.

First, we agree with SHHH that a blanket exemption for all new networks is inconsistent with the legislative intent of Section 713 of the Communications Act. As SHHH notes, some new networks may have the ability to provide closed captioning at levels consistent with the transition schedule. Thus, the FCC is under an obligation to consider the financial ability of each new network to provide closed captioning before automatically exempting *all* new networks.

The SHHH and the NAD et. al. petitions also propose additional benchmarks for new and pre-rule programming. We agree that such benchmarks are critical to ensuring a consistent progression toward full captioning access. Given the prior failure of the marketplace to encourage captioning on cable networks, there is little guarantee that without these benchmarks, networks will be timely in their compliance with the captioning mandates.

The NAD et. al. petition raises other points with which we wish to express our support. Among other things, their request urges the Commission to require monitoring and recordkeeping for video programming providers. COR strongly urges the Commission to adopt these proposals. Without such requirements, the task facing consumers, who will be shouldered with the full responsibility of monitoring compliance with the captioning rules, will be overwhelming, if not impossible. The Commission has already deemed monitoring and reporting requirements necessary to ensure accountability and compliance in its proceeding on children's television programming. Similarly, networks should be required to maintain information on their captioned programs, exemptions claimed, and other pertinent facts concerning their compliance with the

FCC's mandates. Such information should be kept in public files, to facilitate monitoring and compliance with the captioning mandates.

The NAD et. al. Petition also requests the Commission to revise its rules governing the complaint process. We agree that where consumers can prove that going first to a provider would be futile, the consumer should be permitted to proceed directly with a complaint to the FCC. Additionally, we support the NAD et. al. suggestion that the FCC shorten the time permitted for providers to respond to complaints. The amount of time given in the final Order - as much as 135 days, if one files the complaint at the start of a quarter - is unconscionable, and will seriously impede the ability of consumers to obtain redress under the rules. Similarly, COR urges the Commission not to grant indefinite undue burden exemptions. COR urges the FCC to make these various changes to prevent captioning delays that will only defeat the purpose of the captioning mandates.

COR also agrees with the NAD and CAN that the FCC lacks the authority to grant a 5% de minimis exemption. The plain language of Section 713, as well as its legislative history, are very clear in delineating the scope of permissible exemptions from the captioning requirements. Congress would not and did not sanction an additional exemption that would account for as much as 5% of all programming. When added to the late night exemption (4 hours per day, or 16% of daily programming), this de minimis rule brings to 21% the programming that is automatically exempt from the FCC's rules. Certainly, this result is not consistent with Congress' objective to provide full access, or even to maximize access, to video programming.

Next, COR agrees with the NAD et. al. that the FCC should reverse its decision to exempt short advertisements, Spanish language programming, and all late night programming. All of

these exemptions are overbroad, result in the denial of access to important programming for deaf and hard of hearing persons nationwide, and can be handled more equitably within the Commission's general revenue exemptions. Finally, we agree that the Commission should require real time captioning for live news programs within two years, and should establish minimum levels of captioning until such time that these requirements take effect. It should be noted that a requirement for real time captioning of live newscasts is already in place in Canada, where there is national recognition that captioning through teleprompters falls short of providing complete access to a program's audio content.

#### IV. Conclusion

For the above reasons, COR urges the Commission to reject the petitions submitted by the various networks to expand the captioning exemptions. Instead, COR urges the Commission to tighten the exemptions as these now exist in the Commission's final Order, as requested by the NAD et. al. and SHHH.

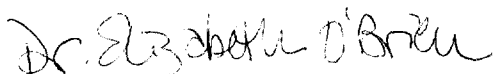
Respectfully submitted,



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Co-Chairs, COR

November 26, 1997



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## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Statement were mailed, postage prepaid, this

26<sup>th</sup> day of November, 1997, to:

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**Vice President, General Counsel**  
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